

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RONALD E. GERBIG,

Plaintiff,

ORDER

v.

09-cv-332-bbc

STATE OF WISCONSIN,

Defendant.

RONALD E. GERBIG,

Plaintiff,

ORDER

v.

09-cv-334-bbc

SHAWN JOHNSON,

Defendant.

Plaintiff Ronald Gerbig seeks leave to proceed in each of the above-captioned cases without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. I am unable to conclude from the answers on plaintiff's affidavits of indigency whether he is indigent. However, because plaintiff's complaints must be

dismissed, I will not require plaintiff to submit new affidavits of indigency.

In addressing any pro se litigant's complaint the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). The court will grant leave to proceed if there is an arguable basis for a claim in fact or law. Nietzke v. Williams, 490 U.S. 319, 325 (1989).

In Case No. 09-cv-332-bbc, plaintiff seeks to have the State of Wisconsin charged with possession of stolen property. In Case No. 09-cv-334-bbc, plaintiff seeks to have his social worker charged with misappropriation of funds.

Although state and federal judges are empowered to try criminal cases, they do not have the power to initiate criminal prosecutions; that is the function of federal and state prosecutors. It is within the sole discretion of these justice department officials to determine whether to prosecute an individual and, if so, with what criminal acts he or she will be charged. United States v. Batchelder, 442 U.S. 14, 124 (1979). Therefore, I will dismiss plaintiff's complaints because they do not contain an arguable basis for a claim in fact or law.

ORDER

IT IS ORDERED that plaintiff Ronald E. Gerbig's request for leave to proceed in forma pauperis in the above two cases is DENIED and the cases are DISMISSED because they do not contain an arguable basis for a claim in fact or law. The clerk of court is directed

to enter judgment in favor of the defendants State of Wisconsin and Shawn Johnson and close these cases.

Entered this 29th day of May, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge